2022

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2022

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2022 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 21

Title 97

(As Revised 2020)

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By the Editorial Staff of the Publisher

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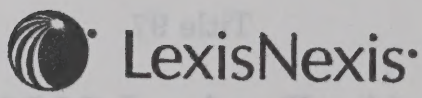
ISBN 978-0-327-09628-3 (Code set)
ISBN 978-1-5221-9391-3 (Volume 21)



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9443 Springboro Pike, Miamisburg, OH 45342

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(Pub. 44510)

User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2022 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2022 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2022 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2022 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 97. Crimes

CHAPTER 7. Crimes Against Sovereignty or Administration of Government.

SEC.

97-7-77. Fraudulent display or use of tribal identification card; reproduction of tribal identification card with intent that it be offered as valid card prohibited; punishment for violation.

MISSISSIPPI CODE
1972
ANNOTATED

VOLUME TWENTY-ONE

TITLE 97.
CRIMES

Chapter 3.	Crimes Against the Person.	97-3-1
Chapter 7.	Crimes Against Sovereignty or Administration of Government.	97-7-1
Chapter 9.	Offenses Affecting Administration of Justice. ...	97-9-1

CHAPTER 1.
CONSPIRACY, ACCESSORIES AND ATTEMPTS

§ 97-1-1. Conspiracy.

JUDICIAL DECISIONS

ANALYSIS

9. Evidence.
14. —Sufficiency.
16. —Other.

9. Evidence.

14. —Sufficiency.

Evidence was sufficient to support defendants' convictions of conspiracy because one defendant was the driver of the vehicle in which the victim was held against his will and placed in the trunk, that defendant was present when the second defendant put a gun to the victim's head and forced him to pretend to have sex with a telephone pole, he was present when the second defendant poured diesel fuel on the victim and when he forced a stick into the victim's rectum. Both defendants were convicted of kidnapping. Magee v. State, — So. 3d —, 2022 Miss. App. LEXIS 108 (Miss. Ct. App. Apr. 5, 2022).

Reasonable jury could find the elements of conspiracy were proved beyond a reasonable doubt because there was a mutual agreement to commit armed robbery among defendant and his co-conspirators; after the robbery, defendant sped away from a store as soon as the co-conspirators entered a van, showing defendant expected a crime to occur and acted as the getaway driver for his part in the crime, and defendant and the co-conspirators all shared the proceeds from their crime. Edwards v. State, — So. 3d —, 2022 Miss. App. LEXIS 123 (Miss. Ct. App. Apr. 19, 2022).

16. —Other.

Defendant's convictions for armed robbery and conspiracy to commit armed robbery were not contrary to the weight of the evidence because a co-conspirator's testimony was not so incredible that the jury could not accept it as truthful, and the video footage corroborated his testimony; Defendant's convictions did not hinge entirely on the co-conspirator's testimony but also on the testimony of another co-conspirator, a detective, the store clerk, as

well as the security video. Edwards v. State, — So. 3d —, 2022 Miss. App. LEXIS 123 (Miss. Ct. App. Apr. 19, 2022).

In a case in which defendant was convicted of armed robbery and conspiracy after he coached a 14-year-old boy to rob a store, the verdict was not contrary to the overwhelming weight of the evidence because, prior to robbing the store, the boy and defendant planned to meet at a wooded area not far from the store after he finished the job; after he robbed the store, the boy ran to that wooded area and waited on defendant for several hours before abandoning the bag of money, ski mask, gloves, sunglasses, and rifle; an officer found those same items in that wooded area on the night of the robbery; and the boy's testimony was not so unreasonable, self contradictory or substantially impeached to warrant reversal. Pittman v. State, 314 So. 3d 1167, 2021 Miss. App. LEXIS 146 (Miss. Ct. App. 2021).

§ 97-1-3. Accessories before the fact.

JUDICIAL DECISIONS

ANALYSIS

5. Evidence.
6. Instructions.

5. Evidence.

Court of Appeals properly affirmed defendant's conviction for conspiracy and possession with intent to distribute, because while the Court erred in finding that defendant constructively possessed the drugs, the evidence was more than sufficient for a reasonable jury to find, beyond a reasonable doubt, that defendant was guilty of two counts of possession with intent to distribute on the theory that he was an accessory before the fact—his jailers recorded numerous telephone conversations in which he appeared to be directing a drug trafficking ring. Williams v. State, 334 So. 3d 68, 2022 Miss. LEXIS 50 (Miss. 2022).

Where defendant was tried as an accessory before the fact to a murder, sufficient evidence was presented to support defendant's conviction of first-degree murder, in violation of Miss. Code Ann. § 97-3-19 (Supp. 2018), including that he dropped off the shooter, who had a gun cocked, so that the shooter could locate and kill the victim. Johnson v. State, 290 So. 3d 1232, 2020 Miss. LEXIS 35 (Miss. 2020).

6. Instructions.

Because the evidence was sufficient to show that defendant aided and abetted his co-defendants in the burglary of the victim's home his motions for a direct verdict and judgment notwithstanding the verdict and his request for a peremptory instruction were properly denied. The State provide overwhelming evidence establishing that defendant planned both burglaries, provided tools and information to his co-defendants, and received money and property from the burglary. Wofford v. State, — So. 3d —, 2022 Miss. App. LEXIS 137 (Miss. Ct. App. May 3, 2022).

Accomplice-liability jury instruction did not constructively amend the indictment because defendant, as an accomplice to a felony before the fact, was liable as a principal. The indictment charged him with "acting in concert" with his co-defendants to burglarize the home and the evidence showed that he planned both burglaries, provided tools and information to his co-defendants, and received money and property from the burglary. Wofford v. State, — So. 3d —, 2022 Miss. App. LEXIS 137 (Miss. Ct. App. May 3, 2022).

There was no error in the jury instruction because the theory of accessory before the fact was not without foundation and was an issue within the realm for a jury to decide. Although defendant was not physically present at the time of the burglaries, there were several testimonies showing that he aided his co-defendants in the commission of the crimes and thus, sufficient evidence existed to present an accomplice-liability instruction to the jury. Wofford v. State, — So. 3d —, 2022 Miss. App. LEXIS 137 (Miss. Ct. App. May 3, 2022).

§ 97-1-5. Accessories after the fact; punishment.

JUDICIAL DECISIONS

ANALYSIS

2. Evidence; generally.
3. —Sufficiency.
4. Instructions.
5. Sentences.

2. Evidence; generally.

Circuit court did not err in admitting into evidence an individual's murder conviction because the State of Mississippi used the murder conviction only to show that defendant assisted the individual when defendant handed the individual the keys to defendant's car as a way to escape after the individual shot and killed the victim. To prove that defendant was an accessory after the fact to murder, the admission of the individual's murder conviction was necessary. Robinson v. State, 324 So. 3d 1137, 2021 Miss. App. LEXIS 16 (Miss. Ct. App.), cert. denied, 324 So. 3d 800, 2021 Miss. LEXIS 270 (Miss. 2021).

3. —Sufficiency.

Evidence supported defendant's conviction for being an accessory after the fact to a murder because eyewitnesses testified that, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Witnesses also testified that they personally knew that defendant was a member of a gang, and the State of Mississippi presented evidence of defendant's tattoos, which were known gang signs, and of defendant in a gang shirt. Robinson v. State, 324 So. 3d 1137, 2021 Miss. App. LEXIS 16 (Miss. Ct. App.), cert. denied, 324 So. 3d 800, 2021 Miss. LEXIS 270 (Miss. 2021).

Jury's guilty verdict for accessory after the fact to murder was not contrary to the weight of the evidence because a rational juror could conclude that a murder had occurred, and defendant, knowing that a murder had occurred, thereafter knowingly assisted those responsible for the murder to escape or avoid arrest; evidence was presented that defendant assisted with concealing or disposing of physical evidence used in the crime, and he admitted that he assisted one of shooters. Thames v. State, 310 So. 3d 1163, 2021 Miss. LEXIS 17 (Miss. 2021).

Evidence was sufficient to support the second defendant's accessory-after-the-fact conviction because the act of shooting and killing the victims had been completed when the second defendant removed the first defendant's weapon from the crime scene and placed it in their car, an investigator testified that a plastic bag was covering the gun, by the time the second defendant took the gun everyone who had been involved in the shooting was injured and effectively incapacitated, and the second defendant only took the first defendant's gun, not the guns or knives carried by the victims. McCool v. State, 328 So. 3d 173, 2021 Miss. App. LEXIS 215 (Miss. Ct. App.), cert. denied, 328 So. 3d 1252, 2021 Miss. LEXIS 328 (Miss. 2021).

4. Instructions.

Circuit court did not abuse its discretion in giving the State of Mississippi's flight instruction in defendant's trial for being an accessory after the fact to a murder and for participation in gang activity because, after an individual shot the victim in a gang dispute, defendant, who was a police officer, willingly threw the individual defendant's car keys and the individual then escaped in defendant's car. Thus, there was clear probative value of defendant's subsequent flight from the crime scene without rendering assistance. Robinson v. State, 324 So. 3d 1137, 2021 Miss. App. LEXIS 16 (Miss. Ct. App.), cert. denied, 324 So. 3d 800, 2021 Miss. LEXIS 270 (Miss. 2021).

5. Sentences.

Second defendant's 20-year sentence for his accessory-after-the-fact conviction was not grossly disproportionate or otherwise excessive because it was within the statu-

tory requirement, there was no doubt that defendants' crimes were severe, as the first defendant was found guilty on two counts of second-degree murder for the shooting death of a teenage boy and his father, the jury convicted the second defendant of accessory after the fact to second-degree murder for removing the first defendant's gun following the shooting, and the initial comparison of the sentence to the severity of the crime did not give rise to an inference of disproportionality. McCool v. State, 328 So. 3d 173, 2021 Miss. App. LEXIS 215 (Miss. Ct. App.), cert. denied, 328 So. 3d 1252, 2021 Miss. LEXIS 328 (Miss. 2021).

§ 97-1-7. Attempt to commit offense; punishment.

JUDICIAL DECISIONS

ANALYSIS

2. Indictment.
3. Particular offenses.
7. —Homicide.
7. —Homicide.
12. Instructions

2. Indictment.

Indictment was sufficient as to the attempt charge as defendant failed to acknowledge authorities holding that failure was not required to be alleged in indictments charging attempt, and he proffered no compelling reason to abandon those authorities. Scott v. State, 305 So. 3d 145, 2020 Miss. LEXIS 420 (Miss. 2020).

3. Particular offenses.

7. —Homicide.

Sufficient evidence existed to support the jury's conviction of defendant's for attempted first-degree murder because a reasonable jury could rationally find proof beyond a reasonable doubt that he shot at a gas station employee with deliberate design rather than in self-defense; defendant and a victim were already fighting behind the food counter when the employee entered the gas station, and the employee did not enter the store with his weapon drawn. Alvarado v. State, — So. 3d —, 2022 Miss. App. LEXIS 226 (Miss. Ct. App. July 19, 2022).

7. —Homicide.

Defendant's indictment sufficiently notified him of the charge against him because the Legislature did not include a requirement to describe an overt act in an indictment under the attempted murder statute. Defendant's indictment used the word "attempt" and it contained the statutory language that defendant acted with the deliberate design to effect the death of the officer but failed to successfully complete the act, which indicated the failure to complete the attempted crime. Beale v. State, — So. 3d —, 2022 Miss. App. LEXIS 128 (Miss. Ct. App. Apr. 26, 2022).

12. Instructions

Jury instructions 8 and 9 effectively laid out all the essential elements of attempted murder, despite including the words "shoot at," and the variance did not prejudice defendant's defense. The fact that the instructions included the phrase "shoot at" did not substantially alter the elements or proof necessary to find defendant guilty of attempted murder. Beale v. State, — So. 3d —, 2022 Miss. App. LEXIS 128 (Miss. Ct. App. Apr. 26, 2022).

CHAPTER 3.

CRIMES AGAINST THE PERSON

Sec.
97-3-54.7. Human Trafficking Act; forfeiture of assets and disposition of proceeds.
97-3-54.8. Repealed.

Sec.
97-3-54.9. Statewide Human Trafficking Coordinator; duties.

§ 97-3-2. Crimes of violence defined.

Cross References — Ineligibility of person charged under this section to participate in pretrial intervention program, see § 99-15-107.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Ex post facto.

1. In general.

Even though the court found that defendant was not parole eligible because he was convicted of two crimes of violence under Miss. Code Ann. § 97-3-2(1), the State conceded that defense counsel's advice regarding parole eligibility was erroneous, as counsel stated at the plea hearing that defendant would be eligible for early release if he met certain other criteria during his incarceration, and therefore the court remanded the case to the trial court for an evidentiary hearing on the voluntariness of defendant's guilty plea. Hardison v. State, 317 So. 3d 978, 2021 Miss. App. LEXIS 180 (Miss. Ct. App. 2021).

Circuit court correctly determined that defendant was ineligible for parole because the Mississippi Supreme Court clearly resolved the exact issue presented on appeal in Fogleman v. State, 283 So. 3d 685 (Miss. 2019), defendant pled guilty to attempted murder, which was listed as a crime of violence, and whether the decision in Fogleman should be overruled was a decision reserved solely for the Supreme Court. Gava-Hudson v. State, 316 So. 3d 641, 2021 Miss. App. LEXIS 39 (Miss. Ct. App. 2021).

Defendant's sentence of life without the possibility of parole was not illegal and did not violate the Eighth Amendment because he was sentenced as a violent habitual, he had previously been convicted of burglary of a dwelling and was sentenced to 25 years, and he had previously been convicted of murder and sentenced to life in prison. Wilson v. State, 319 So. 3d 497, 2021 Miss. App. LEXIS 224 (Miss. Ct. App. 2021).

2. Ex post facto.

Petitioner's request for expungement was properly denied because the statute, which was passed after he had been sentenced for burglary and which made burglary of a dwelling in Miss. Code Ann. §§ 97-17-23 and 97-17-37 crimes of violence, was not a new penalty for an earlier crime, nor did it change petitioner's punishment in any way, so applying the statute to petitioner's crime did not constitute an ex post facto law. Watson v. State, 329 So. 3d 1215, 2021 Miss. App. LEXIS 456 (Miss. Ct. App. 2021).

§ 97-3-3. Abortion; causing abortion or miscarriage.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in (2) by substituting "paragraph (a)" for "subparagraph (a)." The Joint Committee ratified the correction at its October 19, 2020, meeting.

§ 97-3-7. Simple assault; aggravated assault; simple domestic violence; simple domestic violence third; aggravated domestic violence; aggravated domestic violence third.

JUDICIAL DECISIONS

ANALYSIS

1. In general; definitions and distinctions.
6. Indictment or affidavit; generally.
7. —Sufficiency of.
12. Double jeopardy.
13. Evidence; generally.
14. — Admissibility.
18. — Sufficiency.
22. Instructions; generally.
32. Miscellaneous.

1. In general; definitions and distinctions.

Age is not an element of the crime of aggravated assault; instead, it can be used as an aggravator per statute to extend the time of incarceration and to impose a monetary fine. Jones v. State, 326 So. 3d 521, 2021 Miss. App. LEXIS 379 (Miss. Ct. App. 2021).

6. Indictment or affidavit; generally.

7. —Sufficiency of.

There was no error in the language of the indictment because the charging indictment tracked the statutory language and included each element of the offense. Pope v. State, 2021 Miss. App. LEXIS 275 (Miss. Ct. App. June 29, 2021).

12. Double jeopardy.

Defendant's convictions for aggravated assault and abuse of a vulnerable person did not violate double jeopardy; victim's age was not a prerequisite to finding defendant guilty of aggravated assault. Instead, the victim's age was considered an aggravating circumstance once the elements of the crime were met. The aggravator of a conviction for attacking a person 65 years or older does not delineate an independent substantive offense from the crime of aggravated assault, and so does not trigger a violation of double jeopardy. Jones v. State, 326 So. 3d 521, 2021 Miss. App. LEXIS 379 (Miss. Ct. App. 2021).

13. Evidence; generally.

14. — Admissibility.

With or without the stick, the jury could have found that defendant committed aggravated assault on the victim, who testified that she was hit with a stick, she was attacked on her front porch, and later she found a portion of a stick there, which a detective reasoned matched the injuries she sustained. It was not an abuse of discretion for the trial court to admit the piece of wood into evidence, and once admitted, it was up to the jury to determine if it was authentic. Jones v. State, 326 So. 3d 521, 2021 Miss. App. LEXIS 379 (Miss. Ct. App. 2021).

18. — Sufficiency.

There was sufficient evidence for a rational trier of fact to have rendered a guilty verdict for simple assault on a law enforcement officer, in violation of Miss. Code Ann. § 97-3-7(1)(a) (Supp. 2016), where an officer testified defendant hit him in the chest and bit him, and another officer testified that defendant kicked the officer in the groin. Bradford v. State, 337 So. 3d 277, 2022 Miss. App. LEXIS 121 (Miss. Ct. App. 2022).

Although the evidence was conflicting, it was sufficient to convict defendant of simple assault domestic violence because the victim alleged that defendant choked her, making it hard for her to breathe, and a nurse practitioner who treated the victim opined that the victim's injuries were consistent with choking. Eubanks v. State, 341 So. 3d 896, 2022 Miss. LEXIS 165 (Miss. 2022).

Evidence that defendant rocked toward an officer with a rifle draw before the officer fired at defendant response was sufficient to support defendant's conviction for aggravated assault upon a law-enforcement officer. Turner v. State, 319 So. 3d 1066, 2021 Miss. LEXIS 157 (Miss.

2021), cert. denied, 2021 U.S. LEXIS 4888 (U.S. Oct. 4, 2021).

Sufficient evidence supported defendant's convictions of aggravated assault and abuse of a vulnerable person; the victim was hit with a stick on her front porch, and while she did not see her attacker, she saw him flee in her neighbor's daughter's car, as did another neighbor, and defendant was later pulled over driving that car. Although he argued that there was no DNA evidence, the State was given the benefit of all reasonable inferences. Jones v. State, 326 So. 3d 521, 2021 Miss. App. LEXIS 379 (Miss. Ct. App. 2021).

Evidence supported defendant's conviction for aggravated assault because witnesses, including the complainant, testified that defendant watched another individual place the complainant who was bound with duct tape in a bath tub filled with hot water and then used a gun to play Russian Roulette with the complainant, defendant never told the other individual to stop, defendant told a person who came to the house that the complainant was going to be harmed, and photographs of the third-degree burns which the complainant suffered were presented. Jones v. State, 330 So. 3d 793, 2021 Miss. App. LEXIS 504 (Miss. Ct. App. 2021).

22. Instructions; generally.

State of Mississippi failed to adequately instruct the jury on all elements of aggravated assault by omitting the word "serious" from the phrase "serious bodily injury" so that the instruction was inadequate as it broadened the grounds upon which defendant was convicted. The jury was no longer required to consider how serious the victim's injuries were. Kivinen v. State, 314 So. 3d 167, 2021 Miss. App. LEXIS 136 (Miss. Ct. App. 2021).

32. Miscellaneous.

Sufficient evidence supported defendant's conviction for aggravated domestic violence by choking because the victim testified that defendant put his forearm around her neck to choke her, causing her to see spots and go limp, he would then loosen his grip, and she would gasp for air and that happened over and over. Her medical examination revealed "bruising" and "redness" all around the victim's neck area. McCarty v. State, — So. 3d —, 2022 Miss. App. LEXIS 219 (Miss. Ct. App. June 28, 2022).

OPINIONS OF THE ATTORNEY GENERAL

"Family or household member", as that term is used in Sections 97-3-7 and 99-3-7, includes individuals who are married, were married, or who live together in a relationship, although not married; further, it is not limited to a blood relationship and can relate to an in-law relationship or other relatives of one spouse living in the household; however, "boyfriend-girlfriend" (or any other variation of this) relationships are not included in the definition of "family or household member", unless the persons reside or resided together as spouses; finally, although not falling into the definition of "family or household member", if the individuals have a biological or legally adopted child between them, the relationship is also protected. Carrubba, Oct. 6, 2000, A.G. Op. #2000-0588.

The Court hearing a domestic violence charge could prohibit the defendant from possessing a handgun if, pursuant to Miss. Code Ann. § 93-21-11, the Court deems it necessary to protect the victim(s). Where a handgun was stolen from the defendant, recovered by a Police Department, and its return was requested by the defendant, the Department may ask the Court for such an order and if granted, may refuse to return the handgun to the defendant. Dawson, Jr., March 9, 2007, A.G. Op. #07-00101, 2007 Miss. AG LEXIS 89.

§ 97-3-15. Homicide; justifiable homicide; use of defensive force; duty to retreat.

JUDICIAL DECISIONS

ANALYSIS

4. Self-defense; generally.
5. —Evidence.
7. Instructions; generally.
8. —Self-defense.

4. Self-defense; generally.

5. —Evidence.

Even if a jury could have reasonably found that defendant acted in self-defense when he shot the victim the first time, with respect to the second and third shots, the jury could reasonably infer that the victim was unarmed and that these additional shots were unnecessary and thus negated defendant's self-defense claim; the jury heard testimony that defendant immediately fled the scene and hid out in Memphis, actions a jury may reasonably find relevant in considering his self-defense claim. Wayne v. State, 337 So. 3d 704, 2022 Miss. App. LEXIS 132 (Miss. Ct. App. 2022).

Sufficient evidence existed to support the jury's conviction of defendant's for attempted first-degree murder because a reasonable jury could rationally find proof beyond a reasonable doubt that he shot at a gas station employee with deliberate design rather than in self-defense; defendant and a victim were already fighting behind the food counter when the employee entered the gas station, and the employee did not enter the store with his weapon drawn. Alvarado v. State, — So. 3d —, 2022 Miss. App. LEXIS 226 (Miss. Ct. App. July 19, 2022).

Circuit court properly denied defendant's motions for a judgment notwithstanding the verdict and for a new trial because it gave all the instructions defendant proposed, defendant made no objection to any of the instructions the State proposed, and there was evidence directly contradicting defendant's claim of self-defense where the evidence showed that when the victim arrived at defendant's house, defendant came out holding his shotgun, which he pointed at the unarmed victim, defendant did not tell the victim to leave, the victim had not threatened defendant either before arriving or at the time of the shooting, and defendant's testimony was contradicted by the evidence. Ashmore v. State, 302 So. 3d 707, 2020 Miss. App. LEXIS 528 (Miss. Ct. App. 2020).

Evidence was sufficient to support defendant's convictions of second-degree murder and attempted murder because even if the jury found that the castle doctrine presumption applied, the State presented sufficient evidence to overcome it and defendant's claim of self-defense, as there was evidence that any fight had subsided before defendant shot the victims, the victims were standing passively in the front yard when they were shot, neither victim had a gun when he was shot and only defendant was armed, and a physician testified that one victim was shot while he was trying to flee and the other victim was shot twice in the back. Sands v. State, 315 So. 3d 1066, 2020 Miss. App. LEXIS 562 (Miss. Ct. App. 2020), cert. denied, 314 So. 3d 1162, 2021 Miss. LEXIS 113 (Miss. 2021).

7. Instructions; generally.

8. —Self-defense.

Defendant was entitled to a new trial after she was convicted of manslaughter because the trial court abused its discretion in refusing her proposed jury instructions under Miss. Code Ann. § 97-3-15(4); the jury should have been instructed that she had no duty to retreat before using defensive force against her father but, instead, had the right to stand her ground. Williams v. State, — So. 3d —, 2022 Miss. LEXIS 185 (Miss. July 21, 2022).

By giving defendant's requested jury instruction on the excuse of accident, the trial judge allowed him to present his theory of defense that was supported by

the evidence. The trial judge properly refused defendant's requested instruction on self-defense because defendant failed to present evidence to support it; defendant's own statements and testimony contradicted and negated a claim of self-defense. Figueroa v. State, 337 So. 3d 1104, 2021 Miss. App. LEXIS 433 (Miss. Ct. App. 2021), cert. denied, 338 So. 3d 129, 2022 Miss. LEXIS 133 (Miss. 2022).

Trial court did not err by refusing to give a jury instruction on the castle doctrine because at no point during his three recorded statements did defendant indicate that the victim had attempted to forcibly enter his vehicle or to remove him from the vehicle, but rather stated that he voluntarily exited his vehicle after the victim approached. In addition, defendant stated that the victim did not begin acting physically aggressive until both were standing outside of the vehicle. Pulliam v. State, 321 So. 3d 1185, 2020 Miss. App. LEXIS 669 (Miss. Ct. App. 2020), cert. denied, 322 So. 3d 1290, 2021 Miss. LEXIS 201 (Miss. 2021).

Trial court committed reversible error in denying defendant's proposed jury instructions regarding this section rather than giving the question of fact regarding the initial aggressor to the jury for their determination because defendant provided at the very least a meager evidentiary basis for the jury to consider who the initial aggressor was. Defendant was not engaged in criminal activity by asking the victim to leave his home, defendant and his son testified that the victim jumped up from his chair, and they believed he was going to attack defendant. McNeer v. State, 307 So. 3d 508, 2020 Miss. App. LEXIS 668 (Miss. Ct. App. 2020).

§ 97-3-19. Homicide; murder defined; first-degree murder; second-degree murder; capital murder; lesser-included offenses.

JUDICIAL DECISIONS

ANALYSIS

I. IN GENERAL.

1. In general.
8. Deliberate design; malice.
19. Homicide by persons joining in commission of felony.
22. Indictment.

II. EVIDENTIARY MATTERS.

36. Evidence; generally.

I. IN GENERAL.

1. In general.

The appellate court found merit to defendant's argument that his separate convictions for capital murder and kidnapping violated his right against double jeopardy. Accordingly, the appellate court reversed and rendered the kidnapping conviction and vacated his thirty-year sentence for that conviction. Gillum v. State, 303 So. 3d 428, 2020 Miss. App. LEXIS 525 (Miss. Ct. App. 2020).

8. Deliberate design; malice.

Sufficient evidence existed to support the jury's conviction of defendant for first-degree murder because a reasonable jury could rationally believe that he killed the victim with deliberate design; the jury was entitled to conclude that defendant's quick snatch of the victim's pistol from his waistband, coupled with three immediate shots fired at (and striking) the victim, evinced deliberate design. Alvarado v. State, — So. 3d —, 2022 Miss. App. LEXIS 226 (Miss. Ct. App. July 19, 2022).

Trial court properly denied defendant's motion for a new trial because the evidence was sufficient to find that defendant killed the victim with deliberate design, and not in a heat of passion where defendant began acting aggressively toward the victim in a store, kept his right hand in his pocket, argued with him outside the store, and fired into the car in which the victim was a passenger when it lurched toward the curb and bystanders, the jury could have found that the unintentional bump of a bystander, which resulted in no inju-

ries, was not a sufficient provocation to reduce the killing from murder to manslaughter, and the jury could have found that defendant did not kill the victim in the midst of a violent and uncontrollable rage. Baker v. State, 304 So. 3d 707, 2020 Miss. App. LEXIS 590 (Miss. Ct. App. 2020).

Trial court violated defendant's Sixth Amendment rights under the Confrontation Clause by admitting the victim's affidavit into evidence because the affidavit was testimonial hearsay, defendant was unable to cross-examine the victim regarding the statements in the affidavit, and he did not forfeit his right to cross-examine her as he did not kill her to prevent her from testifying at his murder trial. The error was not harmless, and therefore defendant's murder conviction was reversed, because the affidavit helped to establish the premeditation necessary to convict defendant of first-degree murder. Montson v. State, 318 So. 3d 1133, 2020 Miss. App. LEXIS 600 (Miss. Ct. App. 2020), cert. denied, 318 So. 3d 483, 2021 Miss. LEXIS 142 (Miss. 2021).

Defendant's first degree murder conviction upheld because sufficient evidence established he killed the victim with deliberate design without authority of law based on the State presenting several witnesses, including an eyewitness who testified seeing defendant shoot the victim deliberately, another who saw defendant walk toward the victim's car moments before the shooting, and an expert witness who identified at least one of the shell casings matched the handgun that was found on defendant. Easterling v. Mississippi, 306 So. 3d 808, 2020 Miss. App. LEXIS 360 (Miss. Ct. App.), cert. denied, 308 So. 3d 439, 2020 Miss. LEXIS 512 (Miss. 2020).

19. Homicide by persons joining in commission of felony.

There was sufficient evidence to convict defendant of capital murder during the commission of a robbery; the State did not need to prove that defendant actually committed the robbery himself, only that he acted in concert with or aided and abetted two others, and there was sufficient evidence to show that defendant participated in one of the three positions needed to rob the store. Furthermore, defendant had gunshot residue on his hand and his DNA was found on a hat found near the cash register. Booker v. State, 303 So. 3d 1133, 2020 Miss. App. LEXIS 578 (Miss. Ct. App. 2020).

22. Indictment.

There was no error in the language of the indictment because the charging indictment tracked the statutory language and included each element of the offense. Pope v. State, 2021 Miss. App. LEXIS 275 (Miss. Ct. App. June 29, 2021).

Defendant's indictment did not fail to list an essential element of the murder charge because the indictment included the essential elements as required by statute and precedent; the manner by which he caused the victim's death was not required for the indictment because the cause of death was not an essential element of murder. Carter v. State, 313 So. 3d 495, 2020 Miss. App. LEXIS 118 (Miss. Ct. App. 2020), cert. denied, 312 So. 3d 729, 2021 Miss. LEXIS 81 (Miss. 2021).

Indictment for capital murder while in the commission of felonious child abuse comported with Mississippi law and due process as it properly set forth the elements of capital murder and identified the underlying felony, section, and subsection of the statute defining felony child abuse. Nothing more than what was listed was required. Lewis v. State, 295 So. 3d 521, 2019 Miss. App. LEXIS 530 (Miss. Ct. App. 2019), cert. denied, 293 So. 3d 834, 2020 Miss. LEXIS 134 (Miss. 2020).

II. EVIDENTIARY MATTERS.

36. Evidence; generally.

Jury could infer that defendant intended to kill the victim by shooting him, then chasing him and shooting him two more times, once in the back of his left leg and once in the buttocks; the State proved beyond a reasonable doubt that defendant was not acting in justifiable self-defense and that there was sufficient evidence to support his conviction for first-degree murder. Wayne v. State, 337 So. 3d 704, 2022 Miss. App. LEXIS 132 (Miss. Ct. App. 2022).

§ 97-3-21. Homicide; penalty for first- or second-degree murder or capital murder.

JUDICIAL DECISIONS

4. Sentencing factors.

Circuit court applied the correct legal standard and appropriately considered all of the Miller v. Alabama factors, and defendant juvenile's sentence of life without parole for murder was affirmed; substantial evidence supported the circuit court's findings, including that the crime was jointly planned and executed and there did not appear to be any coercion or peer pressure involved. While defendant made a number of efforts to rehabilitate himself while incarcerated, the circuit court found there was not enough evidence to support a weighing in favor of parole. Dotson v. State, 328 So. 3d 659, 2021 Miss. App. LEXIS 73 (Miss. Ct. App.), cert. denied, 329 So. 3d 1200, 2021 Miss. LEXIS 365 (Miss. 2021).

First defendant's two 42-year sentences, one for each count of his second-decree murder convictions, were not grossly disproportionate or otherwise excessive because they were the maximum allowed under the statute, there was no doubt that defendants' crimes were severe, as the first defendant was found guilty on two counts of second-degree murder for the shooting death of a teenage boy and his father, the jury convicted the second defendant of accessory after the fact to second-degree murder for removing the first defendant's gun following the shooting, and the initial comparison of the sentence to the severity of the crime did not give rise to an inference of disproportionality. McCool v. State, 328 So. 3d 173, 2021 Miss. App. LEXIS 215 (Miss. Ct. App.), cert. denied, 328 So. 3d 1252, 2021 Miss. LEXIS 328 (Miss. 2021).

§ 97-3-29. Homicide; killing while committing a misdemeanor.

JUDICIAL DECISIONS

1. In general.

Because the indictment tracked the language of the manslaughter statute and the maltreatment statute, it was sufficient to put defendant on notice of the charges against her; the indictment's use of the common term "misdemeanor manslaughter" did not render it defective, and the indictment specifically identified not only the underlying misdemeanor (maltreatment) but also the type of maltreatment (failure to provide sufficient medical attention). Brannan v. State, 319 So. 3d 1119, 2020 Miss. App. LEXIS 593 (Miss. Ct. App. 2020), cert. denied, 318 So. 3d 484, 2021 Miss. LEXIS 172 (Miss. 2021).

Trial judge did not err or abuse his discretion by denying defendant's motions for judgment notwithstanding the verdict and for a new trial because the evidence was sufficient for the jury to have found she made a deliberate decision not to provide sufficient medical attention to a prisoner, and her decision demonstrated a conscious disregard of a life-threatening risk; defendant knew the prisoner exhibited symptoms of a life-threatening condition and failed to send him to a medical provider. Brannan v. State, 319 So. 3d 1119, 2020 Miss. App. LEXIS 593 (Miss. Ct. App. 2020), cert. denied, 318 So. 3d 484, 2021 Miss. LEXIS 172 (Miss. 2021).

§ 97-3-35. Homicide; killing without malice in the heat of passion.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
4. Self-defense.
6. Evidence; generally.
7. — Warranting manslaughter.
8. — Not warranting manslaughter.
18. Miscellaneous.

1. In general.

Miss. Code Ann. § 97-3-35 is not divided into differing counts or degrees; the statute includes two theories of manslaughter, heat of passion and imperfect self-defense, and these theories are not degrees of an offense that must be specified per Miss. R. Crim. P. 24.2(c). Jones v. State, 334 So. 3d 108, 2022 Miss. LEXIS 60 (Miss. 2022).

Jury's general verdict should be upheld if sufficient evidence supported defendant's manslaughter conviction, even when the jury was instructed on two factual theories, and thus the circuit court did not err by not requiring the jury to specify its verdict. Jones v. State, 334 So. 3d 108, 2022 Miss. LEXIS 60 (Miss. 2022).

4. Self-defense.

Evidence was sufficient to overcome the presumption that defendant shot the victim in reasonable self-defense because no dispute existed that defendant shot the victim and later confessed his actions to the police, defendant admitted that he exited his vehicle because the victim's actions had angered him, a physician testified that the victim was at least three feet away when defendant shot him, and after the shooting defendant fled the crime scene. Pulliam v. State, 321 So. 3d 1185, 2020 Miss. App. LEXIS 669 (Miss. Ct. App. 2020), cert. denied, 322 So. 3d 1290, 2021 Miss. LEXIS 201 (Miss. 2021).

6. Evidence; generally.

7. — Warranting manslaughter.

While defendant argued for reversal because there was insufficient evidence to support a heat-of-passion-manslaughter conviction, either theory, heat of passion or imperfect self-defense, could support a manslaughter conviction if either theory was supported by sufficient evidence, and here, there was sufficient evidence as the jury could have found that defendant shot the victim out of anger after being provoked by the victim's prior confrontation. Jones v. State, 334 So. 3d 108, 2022 Miss. LEXIS 60 (Miss. 2022).

Evidence was sufficient to support defendant's manslaughter conviction, even though the jury acquitted him of possession of a firearm, because he did not challenge the State's proof on any other ground, and there was sufficient evidence for a rational jury to find that defendant drew his gun and deliberately shot the victim in the face and that defendant did not act in necessary self-defense. Brown v. State, 336 So. 3d 134, 2020 Miss. App. LEXIS 627 (Miss. Ct. App. 2020), cert. denied, 316 So. 3d 202, 2021 Miss. LEXIS 131 (Miss. 2021).

8. — Not warranting manslaughter.

Trial court properly denied defendant's motion for a new trial because the evidence was sufficient to find that defendant killed the victim with deliberate design, and not in a heat of passion where defendant began acting aggressively toward the victim in a store, kept his right hand in his pocket, argued with him outside the store, and fired into the car in which the victim was a passenger when it lurched toward the curb and bystanders, the jury could have found that the unintentional bump of a bystander, which resulted in no injuries, was not a sufficient provocation to reduce the killing from murder to manslaughter, and the jury could have found that defendant did not kill the victim in the midst of a violent and uncontrollable rage. Baker v. State, 304 So. 3d 707, 2020 Miss. App. LEXIS 590 (Miss. Ct. App. 2020).

18. Miscellaneous.

Trial court did not plainly err in instructing the jury on murder and man-

slaughter because the use of the word "willfully" was not error, defendant did not request an instruction defining "heat of passion," and even though the trial court erroneously omitted language that required the State to prove that the killing was committed either in a cruel or unusual manner or by the use of a dangerous weapon, the error was harmless. Brown v. State, 336 So. 3d 134, 2020 Miss. App. LEXIS 627 (Miss. Ct. App. 2020), cert. denied, 316 So. 3d 202, 2021 Miss. LEXIS 131 (Miss. 2021).

§ 97-3-47. Homicide; all other killings.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
11. Instructions; generally.
16. Evidence sufficient.
19. Evidence insufficient.

1. In general.

Intoxication is not a required element of culpable negligence manslaughter. Butler v. State, — So. 3d —, 2022 Miss. App. LEXIS 97 (Miss. Ct. App. Mar. 22, 2022).

11. Instructions; generally.

In defendant's first-degree murder trial, the circuit court did not err in refusing to limit the jury instructions to only manslaughter and justifiable homicide; there was no crime of justifiable homicide, and there was sufficient evidence presented to support the circuit court's giving of an instruction on second-degree murder and manslaughter because such were lesser offenses to first-degree murder. McDowell v. State, 311 So. 3d 1252, 2021 Miss. App. LEXIS 82 (Miss. Ct. App. 2021).

16. Evidence sufficient.

Sufficient evidence supported defendant's conviction of culpable negligence manslaughter; under the influence or not, other factors were present upon which a jury could have found defendant guilty, including his violation of five boating rules leading up to the collision, his admission that he was going too fast, and his failure to make any effort to avoid the accident. Butler v. State, — So. 3d —, 2022 Miss. App. LEXIS 97 (Miss. Ct. App. Mar. 22, 2022).

19. Evidence insufficient.

Evidence was insufficient to convict defendant of culpable-negligence manslaughter because his singular act of attempting to remove the victim from the bar did not show negligence of a degree so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life as, while the act might have been negligent, there was no evidence of severe trauma or trauma in multiple locations that could have constituted gross negligence; the only injuries were a few lacerations, which could have been the result of medical intervention, and petechia in the eyes, which could have been caused during resuscitation attempts; and there was no evidence of an extensive struggle between the two men. Brown v. State, 304 So. 3d 692, 2020 Miss. App. LEXIS 565 (Miss. Ct. App. 2020).

§ 97-3-53. Kidnapping; punishment.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

1. In general.
2. Elements of offense.
3. Evidence.
4. Double jeopardy.

I. UNDER CURRENT LAW.

1. In general.

Failure of indictment for attempted kidnapping and attempted sexual battery to

describe overt acts toward the commission of those crimes was harmless error; defendant was provided ample notice of the nature of the accusations, given the co-conspirators being listed as prosecution witnesses, the testimony given by an investigator during the preliminary hearing, and a private investigator being appointed to assist in the defense. Mitchell v. State, 327 So. 3d 142, 2021 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, 328 So. 3d 1252, 2021 Miss. LEXIS 311 (Miss. 2021).

Defendant failed to preserve an objection to jury instructions, and any error was harmless; although the instructions, as the indictment, for attempted kidnapping and attempted sexual battery failed to specify an overt act, the indictment did not deprive defendant of notice of the charges against him and the instructions, which generally tracked the indictment, did not substantially alter the essential elements of the crimes. Mitchell v. State, 327 So. 3d 142, 2021 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, 328 So. 3d 1252, 2021 Miss. LEXIS 311 (Miss. 2021).

Detective executed an affidavit that stated on information and belief that defendant did willfully, unlawfully and feloniously seize and confine the victim against her will, which was a sufficient charging affidavit; because it appeared from the affidavit and the evidence that there was probable cause to believe that the kidnapping had been committed by defendant, the judge properly issued a warrant for his arrest. Johnson v. State, 325 So. 3d 1177, 2021 Miss. App. LEXIS 326 (Miss. Ct. App. 2021), cert. dismissed, 338 So. 3d 128, 2022 Miss. LEXIS 130 (Miss. 2022).

2. Elements of offense.

Reason defendant did not kidnap the victim was because of outside interference, not because defendant decided to abandon the plan, and thus the third element of the crime of attempted kidnapping was satisfied. Mitchell v. State, 327 So. 3d 142, 2021 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, 328 So. 3d 1252, 2021 Miss. LEXIS 311 (Miss. 2021).

There was sufficient evidence of an overt act in furtherance of the kidnapping; in part, defendant recruited and offered to pay a team of men to carry out his plan and he had already made payments to two of the men, plus he created an elaborate and detailed plan and put much effort to ensure its success, including learning the victim's routines, driving the men to where the victim lived, and procuring the necessary tools to carry out the plan. Mitchell v. State, 327 So. 3d 142, 2021 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, 328 So. 3d 1252, 2021 Miss. LEXIS 311 (Miss. 2021).

3. Evidence.

Evidence was sufficient to support defendants' kidnapping convictions because the evidence showed that after they bailed the victim out of jail and the victim could not get money for the bond, defendants took him to buy cocaine in lieu of money, and when he returned to the vehicle without the drugs one defendant got made and pulled a gun, handcuffed the victim, and put him in the trunk. Magee v. State, — So. 3d —, 2022 Miss. App. LEXIS 108 (Miss. Ct. App. Apr. 5, 2022).

Sufficient evidence supported defendant's conviction for kidnapping because the victim testified that defendant, her soon-to-be ex-husband bound her ankles with a cord, forced her into the bedroom, forcibly made her bathe, and tied her hands with "hay string." She also said that he forced her into the vehicle and drove her around against her will. McCarty v. State, — So. 3d —, 2022 Miss. App. LEXIS 219 (Miss. Ct. App. June 28, 2022).

Evidence was sufficient to support defendant's kidnapping conviction; he pushed the victim inside the house and locked the door, and when the victim refused to have sex with him, he threatened her with an ice pick and punched her in the head. The victim also testified that defendant was there for approximately 12 hours and she did not feel like she could leave. Johnson v. State, 325 So. 3d 1177, 2021 Miss. App. LEXIS 326 (Miss. Ct. App. 2021), cert. dismissed, 338 So. 3d 128, 2022 Miss. LEXIS 130 (Miss. 2022).

Evidence supported defendant's conviction for kidnapping because witnesses, including the complainant, testified that when the complainant came to defen-

dant's house to retrieve a cell phone defendant emerged from the back of the house with a gun minutes after the complainant arrived; another individual bound the complainant's arms, ribs, wrists, and ankles with duct tape and put the complainant in a closet while defendant watched; and defendant pointed a gun at the complainant and threatened to shoot the complainant. Jones v. State, 330 So. 3d 793, 2021 Miss. App. LEXIS 504 (Miss. Ct. App. 2021).

Evidence supported the kidnapping conviction given the victim's testimony that he believed that he was being held at gunpoint, he was ordered into the car and told to drive to an unknown location, and he complied because he thought that appellant had a gun. Brent v. State, 296 So. 3d 42, 2020 Miss. LEXIS 34 (Miss. 2020).

4. Double jeopardy.

The appellate court found merit to defendant's argument that his separate convictions for capital murder and kidnapping violated his right against double jeopardy. Accordingly, the appellate court reversed and rendered the kidnapping conviction and vacated his thirty-year sentence for that conviction. Gillum v. State, 303 So. 3d 428, 2020 Miss. App. LEXIS 525 (Miss. Ct. App. 2020).

§ 97-3-54.7. Human Trafficking Act; forfeiture of assets and disposition of proceeds.

(1) In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of this act shall be forfeited as provided herein.

(a) The following property shall be subject to forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of this act:

(i) Conveyances, including aircraft, vehicles or vessels;

(ii) Books, records, telecommunication equipment, or computers;

(iii) Money or weapons;

(iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;

(v) Negotiable instruments and securities;

(vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;

(vii) Any property traceable to proceeds from a violation; and

(viii) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land used in furtherance of a violation of this act.

(b)(i) No property used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the property is a consenting party or privy to a violation of this act;

(ii) No property is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the property is a leased or rented property, then the confiscating authority shall notify the owner of the property within five (5) days of the confiscation or within five (5) days of forming reason to believe that the property is a leased or rented property;

(iii) Forfeiture of a property encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

(2) No property shall be forfeited under the provisions of this section, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

(3) Seizure without process may be made if the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant.

(4)(a) When any property is seized under this section, proceedings shall be instituted within a reasonable period of time from the date of seizure or the subject property shall be immediately returned to the party from whom seized.

(b) A petition for forfeiture shall be filed by the Attorney General or a district attorney in the name of the State of Mississippi, the county, or the municipality, and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought, or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in the circuit court or the county court if a county court exists in the county and the value of the seized property is within the jurisdictional limits of the county court as set forth in Section 9-9-21. A copy of the petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(i) The owner of the property, if address is known;

(ii) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of the secured party can be ascertained by the entity filing the petition by making a good faith effort to ascertain the identity of the secured party;

(iii) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the seizing law enforcement agency has actual knowledge; and

(iv) Any person in possession of property subject to forfeiture at the time that it was seized.

(5) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, inquiry of the Department of Revenue shall be made as to what the records of the Department of Revenue show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest that affects the vehicle.

(6) If the property is a motor vehicle and is not titled in the State of Mississippi, then an attempt shall be made to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, inquiry of the appropriate agency of that state shall be made as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone,

holds any lien, security interest or other instrument in the nature of a security device that affects the vehicle.

(7) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, inquiry of the appropriate office designated in Section 75-9-501, shall be made as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(8) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, inquiry of the Mississippi Department of Transportation shall be made as to what the records of the Federal Aviation Administration show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(9) If the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust that affects the property, the record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature of a security interest, or holder of an encumbrance, mortgage or deed of trust that affects the property is to be named in the petition of forfeiture and is to be served with process in the same manner as in civil cases.

(10) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, there shall be filed with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of _____," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, and shall be served as provided in Section 11-33-37, for publication of notice for attachments at law.

(11) No proceedings instituted pursuant to the provisions of this section shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by this section shall be introduced into evidence at the hearing.

(12)(a) An owner of a property that has been seized shall file an answer within thirty (30) days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the seizing law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court if court would not be in session within thirty (30) days after filing the answer. The court

may postpone the forfeiture hearing to a date past the time any criminal action is pending against the owner upon request of any party.

(b) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the petitioner to prove that the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The burden of proof placed upon the petitioner in regard to property forfeited under the provisions of this chapter shall be by a preponderance of the evidence.

(c) At the hearing any claimant of any right, title or interest in the property may prove his lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, other person holding an interest in the property in the nature of a security interest, or any holder of a bona fide encumbrance, mortgage or deed of trust is greater than or equal to the present value of the property, the court shall order the property released to him. If the interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited.

(13) Unless otherwise provided herein, all personal property which is forfeited under this section shall be liquidated and, after deduction of court costs and the expense of liquidation, the proceeds shall be divided as follows:

(a) If only one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be forwarded to the State Treasurer and deposited in the Victims of Human Trafficking and Commercial Sexual Exploitation Fund, and fifty percent (50%) shall be deposited and credited to the budget of the participating law enforcement agency.

(b) If more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be forwarded to the State Treasurer and deposited in the Victims of Human Trafficking and Commercial Sexual Exploitation Fund, twenty-five percent (25%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and twenty-five percent (25%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their twenty-five percent (25%), a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

(14) All money forfeited under this section shall be divided, deposited and credited in the same manner as provided in subsection (13).

(15) All real estate forfeited under the provisions of this section shall be sold to the highest and best bidder at a public auction for cash, the auction to be conducted by the chief law enforcement officer of the initiating law enforcement agency, or his designee, at such place, on such notice and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution at law. The proceeds of the sale shall first be applied to the cost and expense in administering and conducting the sale, then to the satisfaction of all mortgages, deeds of trust, liens and encumbrances of record on the property. The remaining proceeds shall be divided, forwarded and deposited in the same manner as provided in subsection (13).

(16)(a) Any county or municipal law enforcement agency may maintain, repair, use and operate for official purposes all property described in subsection (1)(a)(i) of this section that has been forfeited to the agency if it is free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the property in the nature of a security interest. The county or municipal law enforcement agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the property can be released for its use. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the law enforcement agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (9) of this section.

(b)(i) If a vehicle is forfeited to or transferred to a sheriff's department, then the sheriff may transfer the vehicle to the county for official or governmental use as the board of supervisors may direct.

(ii) If a vehicle is forfeited to or transferred to a police department, then the police chief may transfer the vehicle to the municipality for official or governmental use as the governing authority of the municipality may direct.

(c) If a motor vehicle forfeited to a county or municipal law enforcement agency becomes obsolete or is no longer needed for official or governmental purposes, it may be disposed of in accordance with Section 19-7-5 or in the manner provided by law for disposing of municipal property.

(17) The forfeiture procedure set forth in this section is the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, injunction, supersedeas or in any other manner.

HISTORY: Laws, 2013, ch. 543, § 7, eff from and after July 1, 2013; Laws, 2022, ch. 427, § 7, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (13)(a) and (b), substituted "Victims of Human Trafficking and Commercial Sexual Exploitation Fund" for "Relief for Victims of Human Trafficking Fund."

Cross References — Victims of Human Trafficking and Commercial Sexual Exploitation Fund, see § 97-3-54.10.

§ 97-3-54.8. Repealed.

Repealed by Laws, 2022, ch. 427, § 9, eff from and after July 1, 2022.

§ 97-3-54.8. [Laws, 2013, ch. 543, § 8; Laws, 2017, 1st Ex Sess, ch. 7, § 41, eff from and after passage (approved June 23, 2017); Laws, 2019, ch. 420, § 11, eff from and after July 1, 2019.]

Editor's Notes — Former § 97-3-54.8 established the Victims of Human Trafficking Fund.

§ 97-3-54.9. Statewide Human Trafficking Coordinator; duties.

(1) There is created the position of statewide human trafficking coordinator within the Mississippi Bureau of Investigation of the Department of Public Safety office. The duties of the coordinator shall be as follows:

(a) Coordinate the implementation of this act;

(b) Evaluate state efforts to combat human trafficking;

(c) Collect data on human trafficking activity within the state on an ongoing basis, including types of activities reported, efforts to combat human trafficking, and impact on victims and on the state;

(d) Exclude from publicly released portions of the data collected under subsection (1)(c) the identity of any victim and the victim's family;

(e) Promote public awareness about human trafficking, remedies and services for victims, and national hotline information;

(f) Create and maintain a website to publicize the coordinator's work;

(g) Submit to the Legislature an annual report of its evaluation under subsection (1)(b) and any other annual report required by law, including any recommendations, and summary of data collected under subsection (1)(c) and any other data otherwise required by law to be collected by the coordinator;

(h) Assist in the creation and operations of local human trafficking task forces or working groups around the state, including serving on a task force or a multidisciplinary child protection team;

(i) Conduct other activities, including, but not limited to, applying for grants to enhance investigation and prosecution of trafficking offenses or to improve victim services to combat human trafficking within this state which are appropriate; and

(j) Perform any other duties specifically required by law for the coordinator.

(2) The coordinator shall be authorized to seek input and assistance from state agencies, nongovernmental agencies, service providers and other individuals in the performance of the foregoing duties.

(3) Each state agency, board and commission shall be required to fully cooperate with the coordinator in the performance of the duties of that position.

(4) Every investigation of an offense under this chapter shall be reported to the coordinator by the initiating law enforcement agency pursuant to guidelines established by the coordinator.

(5) Notwithstanding the provisions of Section 43-21-261, disclosure by any state agency, nongovernmental agency, service provider or local or state law enforcement agency of nonidentifying information regarding a minor victim to the coordinator for the purposes of evaluating and collecting data regarding trafficking offenses in the state is specifically authorized.

HISTORY: Laws, 2013, ch. 543, § 9, eff from and after July 1, 2013; Laws, 2019, ch. 420, § 12, eff from and after July 1, 2019; Laws, 2022, ch. 427, § 8, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (1), deleted former (h), which read: "Develop and implement rules and regulations pertaining to the use of the Relief for Victims of Human Trafficking Fund to support services for victims of human trafficking in Mississippi," and redesignated former (i) through (k) as (h) through (j).

§ 97-3-79. Robbery; use of deadly weapon.

JUDICIAL DECISIONS

ANALYSIS

8. Evidence; generally.
10. —Prior to other offenses.
12. Sufficiency of evidence; generally.
13. — Exhibition or use of weapon.
14. Instructions; generally.
21. Miscellaneous.

8. Evidence; generally.

10. —Prior to other offenses.

Defendant's conviction for capital murder was supported by the evidence because the State proved the elements of armed robbery and showed that the taking of the victim's car was against the victim's will and that he was killed. McLaughlin v. State, 338 So. 3d 705, 2022 Miss. App. LEXIS 164 (Miss. Ct. App. 2022).

12. Sufficiency of evidence; generally.

There was sufficient evidence to support defendant's conviction for armed robbery, as the State produced evidence showing that defendant not only fit the physical description of the robber but also had in his possession large sums of cash, including the five fifty-dollar bills of bait money that had been taken in the bank robbery mere hours before. Barnett v. State, 315 So. 3d 458, 2021 Miss. LEXIS 101 (Miss. 2021).

13. — Exhibition or use of weapon.

Evidence supported appellant's armed-robbery conviction where the victim testified that appellant approached him from behind, held something hard like the barrel of a gun against the back of his head, demanded money, and threatened to shot him, and the victim feared for his life. Brent v. State, 296 So. 3d 42, 2020 Miss. LEXIS 34 (Miss. 2020).

14. Instructions; generally.

Although defendant argued that a jury instruction setting out the elements of armed robbery constructively amended his indictment, the appellate court pointed out that defendant did not object to the instruction at trial, so the issue was waived in the absence of plain error. Because the appellate court was unable to say any forfeited error in the jury instruction prejudiced the defense or otherwise affected defendant's substantial right to a fair trial, the appellate court concluded the instruction was not plain error. Collins v. State, 305 So. 3d 1262, 2020 Miss. App. LEXIS 618 (Miss. Ct. App. 2020).

21. Miscellaneous.

No error was found in the trial court's order determining that the crime of armed robbery does exist and that defendant was provided full notice of the charge to which he pleaded guilty. Smith v. State, 301 So. 3d 98, 2020 Miss. App. LEXIS 425 (Miss. Ct. App. 2020).

§ 97-3-82. Extortion; definitions; offense and penalties.

JUDICIAL DECISIONS

1. Sufficiency of evidence.

Evidence sufficiently supported defendant's attempted extortion conviction, as his purpose in seizing and detaining the victim was to film him being sexually battered, threaten to post the videos on social media, and use that material to extort him. Mitchell v. State, 327 So. 3d 142, 2021 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, 328 So. 3d 1252, 2021 Miss. LEXIS 311 (Miss. 2021).

§ 97-3-95. Sexual battery.

JUDICIAL DECISIONS

ANALYSIS

4. Elements.
6. Indictment.
7. Evidence; generally; admissibility.
11. Practice and procedure; jury instructions.

4. Elements.

There was nothing unduly prejudicial in the fact that the elements instruction for sexual battery did not include the one-year time frame because it was not a multi-count, or even a multi-occurrence, case and the trial court made clear in allowing the amended indictment that the charge remained limited to the one incident. The State presented sufficient evidence at trial to allow the jury to reasonably infer that the abuse occurred within one year of the date in the indictment and time was not an essential element of the crime of sexual battery. Garlington v. State, — So. 3d —, 2022 Miss. App. LEXIS 229 (Miss. Ct. App. July 19, 2022).

6. Indictment.

Defendant's indictment for sexual battery was not defective for failing to define an essential element of the offense because the allegation that defendant inserted his fingers into the victim's "private parts" provided was sufficient to provide him with ample notice of the charge against him. Thompson v. State, — So. 3d —, 2022 Miss. App. LEXIS 107 (Miss. Ct. App. Apr. 5, 2022).

Because the State presented sufficient proof to allow a reasonable juror to infer that the sexual battery took place within one year of the date alleged in the amended indictment, there was no error in the trial court allowing the State to amend the indictment to state the one-year time frame. Defendant did not allege inadequate notice of the charges against him, contend that he was unfairly surprised, or raise double-jeopardy concerns and, because defendant never asserted an alibi defense at trial, any failure to prove the alleged original date could not have affected or hampered such a defense. Garlington v. State, — So. 3d —, 2022 Miss. App. LEXIS 229 (Miss. Ct. App. July 19, 2022).

Trial court did not err in allowing the State to amend defendant's indictment because the indictment fully and fairly advised him of the charges against him, as time was not an essential element of the crime of sexual battery, the amendment was to conform with the proof, namely to expand the date range of the alleged crime to January 2013, and defendant was not prejudiced. Stone v. State, 320 So. 3d 1246, 2021 Miss. App. LEXIS 177 (Miss. Ct. App. 2021).

Failure of indictment for attempted kidnapping and attempted sexual battery to describe overt acts toward the commission of those crimes was harmless error; defendant was provided ample notice of the nature of the accusations, given the co-conspirators being listed as prosecution witnesses, the testimony given by an investigator during the preliminary hearing, and a private investigator being appointed to assist in the defense. Mitchell v.

State, 327 So. 3d 142, 2021 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, 328 So. 3d 1252, 2021 Miss. LEXIS 311 (Miss. 2021).

Use of the words "engaged in sexual penetration" in combination with a description of the specific means of sexual penetration was sufficient to charge the crime of sexual battery in the indictment and whether the term "to" or "into" was used with respect to the alleged form of penetration in the victim's mouth or defendant's anus was immaterial because the method of achieving sexual penetration was not an element of the offense. Luis Felipe Torres Mendez v. State, 309 So. 3d 1109, 2020 Miss. App. LEXIS 464 (Miss. Ct. App. 2020).

Defendant's indictment contained the essential elements of the crime of sexual battery and he was provided sufficient facts to fairly inform him of the charge against which he must defend, as well as sufficient facts to enable him to plead double jeopardy in the event of a future prosecution for the same offense and thus, the indictment was not defective. Luis Felipe Torres Mendez v. State, 309 So. 3d 1109, 2020 Miss. App. LEXIS 464 (Miss. Ct. App. 2020).

7. Evidence; generally; admissibility.

Admission of a photograph of the victim's cervical injuries was not an abuse of discretion, as, among other things, it aided the State in proving sexual penetration, an essential element of sexual battery. Bliss v. State, 326 So. 3d 1000, 2021 Miss. App. LEXIS 80 (Miss. Ct. App.), cert. denied, 326 So. 3d 467, 2021 Miss. LEXIS 296 (Miss. 2021).

Jury verdict convicting defendant of fondling a child under the age of sixteen and one count of sexual battery of a child under the age of sixteen was not against the overwhelming weight of the evidence, which included the victim's testimony that defendant had touched her around her legs and private area and had put his private area in her private area. Tate v. State, 331 So. 3d 57, 2021 Miss. App. LEXIS 479 (Miss. Ct. App. 2021).

11. Practice and procedure; jury instructions.

Defendant failed to preserve an objection to jury instructions, and any error was harmless; although the instructions, as the indictment, for attempted kidnapping and attempted sexual battery failed to specify an overt act, the indictment did not deprive defendant of notice of the charges against him and the instructions, which generally tracked the indictment, did not substantially alter the essential elements of the crimes. Mitchell v. State, 327 So. 3d 142, 2021 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, 328 So. 3d 1252, 2021 Miss. LEXIS 311 (Miss. 2021).

§ 97-3-104. Crime of sexual activity between certain individuals and offenders incarcerated in correctional facilities or on correctional supervision; sanctions.

JUDICIAL DECISIONS

1. Sex offender registration.

Miss. Code Ann. § 45-33-23(h)(xvii) requires registration for all convictions under Miss. Code Ann. § 97-3-104; while § 45-33-23(h)(xvii) does not specifically list as a registrable-offense sexual relations involving an offender on intensive supervision, a law-enforcement officer who engages in sexual relations with an offender on intensive-supervision parole also must register as a sex offender. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Trial court erred by dispensing with defendant's registration as a sex offender after defendant was convicted of engaging in sexual activity with a probationer because public policy supported the conclusion that defendant committed a registrable offense; public policy supports the conclusion that Miss. Code Ann. § 45-33-23(h)(xvii) encompasses offenses involv-

ing probationers because a law-enforcement officer is in a unique position of power over a probationer. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Although Miss. Code Ann. § 45-33-23(h)(xvii) does not specifically include the term "probationer," it encompasses the entirety of convictions under Miss. Code Ann. § 97-3-104 as registrable offenses; the subsections under § 45-33-23(h) do not cite the exact language of the statutes that require registration as a sex offender but instead give a general description of the statutory section. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Trial court erred by dispensing with defendant's registration requirement after defendant was convicted of engaging in sexual activity with a probationer because all convictions under the statute resulted in a requirement to register as a sex offender. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

Language in Miss. Code Ann. § 45-33-23(h)(xvii) is sufficient to cover convictions under Miss. Code Ann. § 97-3-104 as a whole; because the subsections under § 45-33-23(h) list brief descriptions of the statutes that require sex-offender registration and do not track the full language of the statutes, § 45-33-23(h)(xvii) includes all convictions under § 97-3-104 as registrable sex offenses. Miss. Dep't of Pub. Safety v. Herrington, 290 So. 3d 1247, 2020 Miss. LEXIS 38 (Miss. 2020).

CHAPTER 5.

OFFENSES AFFECTING CHILDREN

§ 97-5-23. Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person.

JUDICIAL DECISIONS

ANALYSIS

3. Evidence.
10. Constitutionality.

3. Evidence.

Sufficient evidence supported defendant's conviction for two counts of fondling because the victim testified that on two occasions, prior to her 18th birthday, she had sexual contact with defendant, a teacher at the school where she was a student where, once she performed oral sex on defendant, at his request, and the other time defendant put his hand in her pants and touched her vagina. The State also introduced the audio recordings that the victim had recorded of herself and defendant, as well as defendant's written statement to an investigator. Barnes v. State, — So. 3d —, 2022 Miss. App. LEXIS 115 (Miss. Ct. App. Apr. 12, 2022).

Jury verdict convicting defendant of fondling a child under the age of sixteen and one count of sexual battery of a child under the age of sixteen was not against the overwhelming weight of the evidence, which included the victim's testimony that defendant had touched her around her legs and private area and had put his private area in her private area. Tate v. State, 331 So. 3d 57, 2021 Miss. App. LEXIS 479 (Miss. Ct. App. 2021).

10. Constitutionality.

Circuit court properly convicted defendant, upon a jury verdict, of gratification of lust because the statute was not unconstitutionally vague since the most natural understanding of the phrase "over the age of eighteen" included individuals, like defendant, who had passed their 18th birthday, and the prosecutor never commented on the fact that defendant did not testify, nor did she insinuate to the jury that he was guilty because of his decision not to testify. Barnes v. State, 2021 Miss. App. LEXIS 277 (Miss. Ct. App. June 29, 2021).

§ 97-5-33. Exploitation of children; prohibitions.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
3. Evidence.

1. In general.

Because transmitting a single photograph of a single message constituted a single offense under Miss. Code Ann. § 97-5-33, the indictment, which charged defendant with three separate transmissions, was not improperly multiplicitous for double jeopardy purposes. Tallant v. State, — So. 3d —, 2021 Miss. App. LEXIS 512 (Miss. Ct. App. Dec. 14, 2021).

3. Evidence.

In a termination of parental rights case, the trial court did not err in finding that the father was convicted of child exploitation as it was inconsequential whether he committed that crime with a person under the age of 18 or an officer posing as a person under the age of 18 as either could result in a conviction for child exploitation; and his intent was present. In re M.R.H., 312 So. 3d 385, 2020 Miss. App. LEXIS 556 (Miss. Ct. App. 2020).

§ 97-5-35. Exploitation of children; penalties.

JUDICIAL DECISIONS

1. Sentence.

Trial judge sentenced defendant to ten years in the custody of the Mississippi Department of Corrections, with five years to serve, and placed defendant on five years of post-release supervision. Inasmuch as the sentence imposed by the trial judge was less than the State's recommendation, and the amount of time that defendant was sentenced to actually serve was the minimum allowed by the statute, the appellate court found no error in the circuit court's judgment. Wallace v. State, 312 So. 3d 1202, 2020 Miss. App. LEXIS 560 (Miss. Ct. App. 2020).

§ 97-5-39. Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

2. Indictment.
4. Evidence.

I. UNDER CURRENT LAW.

2. Indictment.

Indictment for capital murder while in the commission of felonious child abuse comported with Mississippi law and due process as it properly set forth the elements of capital murder and identified the underlying felony, section, and subsection of the statute defining felony child abuse. Nothing more than what was listed was required. Lewis v. State, 295 So. 3d 521, 2019 Miss. App. LEXIS 530 (Miss. Ct. App. 2019), cert. denied, 293 So. 3d 834, 2020 Miss. LEXIS 134 (Miss. 2020).

4. Evidence.

Sufficient evidence was presented to support defendant's conviction for felony starvation of a minor child because, according to defendant's own statements to investigators, defendant was responsible for feeding the undernourished child of defendant's paramour from when defendant, the paramour, and the child began living together and reasonable minds

could have concluded that the child's malnourishment continued and worsened while under defendant's care. Hampton v. State, 309 So. 3d 1055, 2021 Miss. LEXIS 3 (Miss. 2021).

Insufficient evidence was presented to support defendant's felonious burning of a minor child conviction because the State of Mississippi failed to prove that defendant intentionally, knowingly, or recklessly caused the burns to the body of the child of defendant's paramour, either as a principal or an accomplice. That defendant failed to seek medical care and offered no explanation for what occurred in defendant's household was not proof or evidence that defendant or anyone else knowingly or recklessly caused the child's burn injury. Hampton v. State, 309 So. 3d 1055, 2021 Miss. LEXIS 3 (Miss. 2021).

Defendant was the girls' primary caregiver while they were at her daycare, and the State provided evidence to show the girls were in her sight when her husband sexually abused them; the State presented witnesses who testified that defendant was either in the kitchen, sitting next to the children and her husband, or in the backroom when the abuse occurred, and the testimony proved beyond a reasonable doubt that defendant knowingly permitted the husband's sexual abuse. Westmoreland v. State, 339 So. 3d 130, 2021 Miss. App. LEXIS 495 (Miss. Ct. App. 2021), cert. denied, 338 So. 3d 127, 2022 Miss. LEXIS 141 (Miss. 2022).

§ 97-5-51. Mandatory reporting of sex crimes against minors; definitions; procedure; report contents; forensic samples; penalties.

JUDICIAL DECISIONS

1. Applicability.

Defendant was a mandatory reporter of child sex abuse where she owned and ran an unlicensed daycare out of her home, and she had a legal duty to report any reasonably suspected sex crimes against the minor children in her daycare; there was sufficient evidence that could lead a reasonable trier of fact to conclude beyond a reasonable doubt that defendant knowingly permitted the sexual abuse of three children and that she violated the mandatory-reporter requirement because it was reasonable for defendant to suspect that a sex crime against one victim occurred. Westmoreland v. State, 339 So. 3d 130, 2021 Miss. App. LEXIS 495 (Miss. Ct. App. 2021), cert. denied, 338 So. 3d 127, 2022 Miss. LEXIS 141 (Miss. 2022).

CHAPTER 7.

CRIMES AGAINST SOVEREIGNTY OR ADMINISTRATION OF GOVERNMENT

Sec.

97-7-77. Fraudulent display or use of tribal identification card; reproduction of tribal identification card with intent that it be offered as valid card prohibited; punishment for violation.

§ 97-7-10. Fraudulent statements and representations.

JUDICIAL DECISIONS

1. Evidence.

State did not increase its burden of proving that defendant used or made defendant an order to defraud a state gov-

ernmental entity under Miss. Code Ann. § 97-7-10 when the indictment included the factual allegation that defendant submitted the fraudulent order to the circuit court clerk as the particular government entity receiving the fraudulent order was not a necessary element of the crime. Walker v. State, 340 So. 3d 335, 2021 Miss. App. LEXIS 502 (Miss. Ct. App. 2021), cert. denied, 339 So. 3d 795, 2022 Miss. LEXIS 159 (Miss. 2022).

Evidence was sufficient to show that defendant violated Miss. Code Ann. § 97-7-10 where the testimony made clear that a judge did not use electronic signatures, information on a cell phone found on his person showed that defendant had drafted the fraudulent order, and it was reasonable to infer from the testimony that defendant intended to defraud the circuit court and court clerk. Walker v. State, 340 So. 3d 335, 2021 Miss. App. LEXIS 502 (Miss. Ct. App. 2021), cert. denied, 339 So. 3d 795, 2022 Miss. LEXIS 159 (Miss. 2022).

Because the State failed to prove beyond a reasonable doubt that defendant knowingly or willfully made, used, or produced the title application with the intent to defraud the officer and defendant testified that it was an employee of the seller, not defendant, that created the title application, defendant was entitled to reversal of his conviction for making fraudulent statements and representations to defraud the government. Harris v. State, 311 So. 3d 638, 2020 Miss. App. LEXIS 499 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 832, 2021 Miss. LEXIS 32 (Miss. 2021).

§ 97-7-11. Conspiracy to defraud state; obtaining public funds fraudulently.

Cross References — Ineligibility of person charged under this section to participate in pretrial intervention program, see § 99-15-107.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

§ 97-7-77. Fraudulent display or use of tribal identification card; reproduction of tribal identification card with intent that it be offered as valid card prohibited; punishment for violation.

(1) "Tribal identification card" means a valid identification card issued by a federally recognized Indian tribe that contains a color photograph of the card holder and the card holder's legal name, residence address and date of birth.

(2)(a) It is unlawful for a person knowingly to:

(i) Display, or cause or permit to be displayed, or have in the person's possession, any cancelled, fictitious, fraudulently altered, forged, counterfeited or fraudulently obtained tribal identification card;

(ii) Permit the use of a tribal identification card issued to the person or lend a tribal identification card to another person;

(iii) Display or represent a tribal identification card not issued to the person as being the person's card;

(iv) Display or have in the person's possession a fraudulently altered, forged or counterfeited tribal identification card with intent that the altered, forged or counterfeited card be offered, accepted or mistaken for a valid tribal identification card.

(b) A violation of this subsection is a misdemeanor punishable by a fine

of not more than Five Hundred Dollars ($500.00), by imprisonment for not more than six (6) months, or both.

(3)(a) It is unlawful for a person to photograph, copy, duplicate, alter, forge, counterfeit or in any way reproduce, manufacture, sell or distribute a tribal identification card or facsimile thereof with intent that it be offered, accepted or mistaken for a valid tribal identification card.

(b) A violation of this subsection (3) shall be punished as follows:

(i) If the person was twenty-one (21) years of age or older at the time of the offense, the person is guilty of a felony and shall be punished by a fine of not less than Five Thousand Dollars ($5,000.00), imprisonment for not more than three (3) years, or both.

(ii) If the person was under twenty-one (21) years of age at the time of the offense, a first offense is a misdemeanor punishable by a fine of not more than Five Hundred Dollars ($500.00), by imprisonment for not more than six (6) months, or both, and a second or subsequent offense committed by a minor is a misdemeanor punishable by a fine of not more than One Thousand Dollars ($1,000.00), imprisonment for not more than one (1) year, or both.

HISTORY: Laws, 2021, ch. 378, § 2, eff from and after July 1, 2021.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

CHAPTER 9.

OFFENSES AFFECTING ADMINISTRATION OF JUSTICE

Article 1. In General. 97-9-1

ARTICLE 1.

IN GENERAL.

Sec.
97-9-49. Escape of prisoners; penalties for convicts in jail and persons under arrest or custody; willful failure to return to jail after being entrusted to leave.

§ 97-9-49. Escape of prisoners; penalties for convicts in jail and persons under arrest or custody; willful failure to return to jail after being entrusted to leave.

(1)(a) Whoever escapes or attempts by force or violence to escape from any jail in which he is confined, or from any custody under or by virtue of any process issued under the laws of the State of Mississippi by any court or

judge, or from the custody of a sheriff or other peace officer pursuant to lawful arrest or from the assigned area of a work release program or work initiative, shall, upon conviction, if the confinement or custody is by virtue of an arrest on a charge of felony, or conviction of a felony, be punished by imprisonment in the penitentiary not exceeding five (5) years to commence at the expiration of his former sentence, or, if the confinement or custody is by virtue of an arrest of or charge for or conviction of a misdemeanor, be punished by imprisonment in the county jail not exceeding one (1) year to commence at the expiration of the sentence which the court has imposed or which may be imposed for the crime for which he is charged.

(b) Whoever escapes or attempts by force or violence to escape from any confinement for contempt of court, shall, upon conviction, be found guilty of a misdemeanor and sentenced to imprisonment not to exceed six (6) months in the county jail.

(2) Anyone confined in any jail who is entrusted by any authorized person to leave the jail for any purpose and who willfully fails to return to the jail within the stipulated time, or after the accomplishment of the purpose for which he was entrusted to leave, shall be an escapee and shall be subject to the penalties provided in subsection (1).

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 5(22); 1857, ch. 64, art. 95; 1871, § 2560; 1880, § 2800; 1892, § 1077; 1906, § 1157; Hemingway's 1917, § 884; 1930, § 910; 1942, § 2139; Laws, 1972, ch. 323, § 1; Laws, 1978, ch. 414, § 2; Laws, 1983, ch. 387, § 1; Laws, 2002, ch. 328, § 2; Laws, 2006, ch. 358, § 1, eff from and after July 1, 2006; Laws, 2022, ch. 493, § 4, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (1)(a), inserted "or from the assigned area of a work release program or work initiative."

§ 97-9-59. Perjury; definition.

JUDICIAL DECISIONS

7. Proof, generally.

8. —Sufficiency.

Although a terminated hotel employee protested that a manager of the hotel committed perjury during the employee's hearing for benefits, perjury was defined by statute and only existed when a person willfully and corruptly swore, testified, or affirmed falsely. However, there was no proof that occurred in the case. Mayes v. Miss. Dep't of Empl. Sec., 322 So. 3d 966, 2021 Miss. App. LEXIS 288 (Miss. Ct. App. 2021).

§ 97-9-72. Fleeing or eluding a law enforcement officer in a motor vehicle; felonies; sanctions; defenses.

JUDICIAL DECISIONS

ANALYSIS

3. Indictment.
5. Sentence.

3. Indictment.

Police officers committed no Fourth Amendment violation, because they had probable cause to initiate a traffic stop when they observed defendant commit a traffic violation; and he fled instead of stopping his vehicle in response to blue lights and sirens. Carson v. State, 341 So. 3d 995, 2022 Miss. App. LEXIS 192 (Miss. Ct. App. 2022).

Evidence was sufficient to support defendant's conviction of felony evasion because there was undisputed evidence that when the officer activated his lights and siren defendant was given a signal to stop, defendant willfully failed to obey the officer's direction to stop and sped away, and when the officer witnessed two undisputed traffic violations—speeding and failure to display a license—he was acting in the lawful performance of his duty and with reasonable suspicion to believe that defendant had committed a crime. Fogleman v. State, 311 So. 3d 1221, 2021 Miss. App. LEXIS 17 (Miss. Ct. App. 2021).

Evidence was sufficient to show that a victim suffered serious bodily injury because she testified to suffering from a permanent injury as a result of the collision for which she still experienced physical symptoms and for which she had to use prescription medication. Fogleman v. State, 311 So. 3d 1221, 2021 Miss. App. LEXIS 17 (Miss. Ct. App. 2021).

5. Sentence.

Jury was properly instructed on the element of serious bodily injury because the jury had clearly been properly instructed on the requisite elements of the crime including the element of "serious bodily injury," in one instruction and they were also given a definition of that term in another instruction. Fogleman v. State, 311 So. 3d 1221, 2021 Miss. App. LEXIS 17 (Miss. Ct. App. 2021).

§ 97-9-73. Resisting or obstructing arrest; fleeing or eluding law enforcement officer in motor vehicle.

JUDICIAL DECISIONS

1. In general.

Evidence was sufficient to support defendant's conviction of resisting arrest because his arrest was lawful, he refused to place his hands behind his back and the officers had to physically move his hands in order to handcuff him, and an officer testified that there was a brief struggle before defendant was placed in the patrol car. Sims v. State, 329 So. 3d 528, 2021 Miss. App. LEXIS 197 (Miss. Ct. App.), cert. denied, 329 So. 3d 1202, 2021 Miss. LEXIS 361 (Miss. 2021).

ARTICLE 3.

OBSTRUCTION OF JUSTICE.

§ 97-9-113. Intimidating a witness.

JUDICIAL DECISIONS

1. Evidence.

Judgment of the Court of Appeals was reversed because there was there was sufficient evidence for a reasonable jury to find that defendant encouraged or asked the witness to provide false information to hinder or interfere with an ongoing criminal investigation where defendant confronted the witness at her home and tried to speak with her at work on at least two occasions. Rainey v. State, 334 So. 3d 1124, 2022 Miss. LEXIS 67 (Miss. 2022).

Conviction for intimidating a witness had to be reversed because there was no proof of intimidation, threats, harassment, or that defendant instructed the witness to give false statements, as the witness's testimony was that defendant did not pressure her to give false testimony and told the witness to tell the truth. Rainey v. State, — So. 3d —, 2021 Miss. App. LEXIS 115 (Miss. Ct. App. Mar. 16, 2021), rev'd, 334 So. 3d 1124, 2022 Miss. LEXIS 67 (Miss. 2022).

3. Constitutionality.

Because defendant's speech, talking to witness to find out what the witness told police, could constitute prosecutable speech under this section, the appellate court could not hold this section as applied to the facts violated defendant's First Amendment free-speech right. Rainey v. State, — So. 3d —, 2021 Miss. App. LEXIS 115 (Miss. Ct. App. Mar. 16, 2021), rev'd, 334 So. 3d 1124, 2022 Miss. LEXIS 67 (Miss. 2022).

§ 97-9-125. Tampering with physical evidence.

JUDICIAL DECISIONS

2. Insufficient evidence.

Evidence was insufficient to convict defendant of possession of cocaine with intent to distribute and tampering with evidence, because there was no evidence that he as opposed to two other customers, possessed and flushed the cocaine found outside the pool hall. The evidence permitted only an inference that one of the three men was guilty, and the jury could only guess as to the guilty party; evidence that defendant had a marked twenty-dollar bill from a prior drug deal in his pocket when he was arrested could not prove that he possessed or flushed the cocaine. Smoots v. State, 310 So. 3d 1184, 2020 Miss. App. LEXIS 373 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 829, 2021 Miss. LEXIS 29 (Miss. 2021).